

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 STEVEN KINFORD,

11 Plaintiff,

12 vs.

13 JAMES PINCOCK et al.,

14 Defendants.
15
16

3:15-cv-00512-RCJ-WGC

ORDER

17 Plaintiff sued Defendants in state court alleging deliberate indifference under the Eighth
18 Amendment pursuant to 42 U.S.C. § 1983 and state negligence law based on allegedly defective
19 facial reconstruction surgery. Defendants removed. The Court granted Defendants' motion to
20 dismiss at the recommendation of the Magistrate Judge. The Magistrate Judge had
21 recommended dismissal of the action with prejudice but also recommended keeping the case
22 open to give Plaintiff an opportunity to amend to make allegations of unlawful retaliation against
23 two new defendants. The Court nominally adopted the report and recommendation in full but in
24 substance rejected it in part, ordering the Clerk to close the case.
25
26
27
28

1 Plaintiff has now asked the Court to clarify the procedural posture of the case. The Court
2 interprets the motion as a motion for relief from judgment under Rule 60(a). The Court has lost
3 jurisdiction to the Court of Appeals, however, and can only make an indicative ruling under Rule
4 62.1. If the Court of Appeals were to remand for the limited purpose of ruling on the present
5 motion, the Court would rule that it made an oversight as contemplated under Rule 60(a) when it
6 dismissed without leave to amend to make allegations of unlawful retaliation against the two
7 proposed defendants.
8

9 **CONCLUSION**

10 IT IS HEREBY INDICATED that the Court WOULD GRANT the Motion for Relief
11 from Judgment (ECF No. 51) if the Court of Appeals were to remand for that purpose.
12

13 IT IS SO ORDERED.

14 DATED: This 17th day of February, 2017.

15
16 
17 ROBERT C. JONES
18 United States District Judge
19
20
21
22
23
24
25
26
27
28